



PATENT
Customer No. 22,852
Attorney Docket No. 9423.0023-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Curtis WHITE et al.) Group Art Unit: 3732
)
Patent No.: 6,872,211 B2) Examiner: M. B. Priddy
)
Issue date: March 29, 2005)
)
Application No.: 10/057,535)
)
Filed: January 24, 2002)
)
For: HYBRID STONE RETRIEVAL) Confirmation No.: 3017
DEVICE)

BOX: PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)**

In accordance with 37 C.F.R. § 1.705(d), Applicants hereby request reconsideration of the patent term adjustment under 35 U.S.C. § 154(b) of eighty five (85) days indicated on the face of U.S. Patent No. 6,872,211 B2. Specifically, as described below, Applicants believe that this patent is entitled to one hundred and sixty-seven (167) days of additional patent term. As required by 37 C.F.R. §§ 1.705(b)(1) and 1.705(d), this Request is accompanied by a check to pay the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). Additionally, as required by 37 C.F.R. §1.705(d), this Request is being filed within two months of issuance of the aforementioned patent and only raises

issues relating to events occurring after the mailing of the Notice of Allowance.

Therefore, this Request does not raise any issues that were raised or could have been raised in a request for reconsideration of patent term adjustment under 37 C.F.R. § 1.705(b).

Applicants received, among other things, a Notice of Allowance and a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) on October 19, 2004, advising that this patent application was entitled to one hundred and sixty-seven (167) days of patent term adjustment. A copy of the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) is attached for reference.

On January 7, 2005, Applicants paid the issue and publication fees, and submitted a Fee Address Indication Form and a Notice of Assignee Name Change. Copies of these documents are also attached. The issue fee was thus paid within the three-month payment period, and before its due date of January 19, 2005.

Applicants then received an Issue Notification from the PTO dated March 9, 2005, which indicated that Applicants were entitled to only eighty five (85) days of patent term adjustment. A copy of that Notification is also attached for reference. Subsequently, U.S. Patent No. 6,872,211 B2 issued on March 29, 2005, and the face of this patent also indicated a patent term adjustment under 35 U.S.C. § 154(b) of only eighty five (85) days.

Applicants believe that the adjustment indicated in the Issue Notification and on the patent's face is incorrect, and that the correct patent term adjustment should be one hundred and sixty-seven (167) days, as stated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b).

The PAIR printout, indicating how the Office calculated the eighty-five (85) day patent term adjustment, is also attached hereto for reference. As shown in the printout, this application was filed on January 24, 2002. Applicants agree with the Office that the Office accrued a delay of one hundred and ninety-six (196) days when it issued the first Office Action on October 6, 2003. Applicants also agree with the Office that this period of adjustment should be reduced by twenty nine (29) days because Applicants responded to that Office Action on February 4, 2004.

The PAIR printout, however, incorrectly indicates that this patent application is further subject to an eighty-two (82) day reduction in patent term because of a Miscellaneous Incoming Letter dated January 7, 2005. Applicants submitted a Fee Address Indication Form and a Notice of Assignee Name Change with the issue fee on January 7, 2005. However, although reductions of patent term may apply to papers submitted after a notice of allowance under 37 C.F.R. § 1.704(c)(10), neither of these submissions justified a revision and reduction of the patent term adjustment indicated on the Determination of Patent Term Adjustment under 35 U.S.C. 154(b). Particularly, the Patent Office published a notice clarifying the type of papers filed after a Notice of Allowance that will not result in a reduction in patent term. Specifically, as explained by the Office:

submission of certain papers after a "Notice of Allowance," which do not cause substantial interference and delay in the patent issue process, are not considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application. The following are examples of such papers: (1) Issue Fee Transmittal (PTOL-85B), (2) Power of Attorney, (3) Power to Inspect, (4) Change of Address, (5) Change of Status (small/not small entity status), (6) a response to the examiner's reasons for allowance, and (7) letters related to government interests (e.g., those between

NASA and the Office). Therefore, the submission of these papers after a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and would not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10).

1247 Off. Gaz. Pat Office 111 (June 26, 2001). Thus, the Fee Address Indication Form, based on the fourth example provided by the Office, clearly cannot form the basis of the eighty-two (82) day reduction in patent term shown on the PAIR printout. Additionally, like the examples of submissions that do not result in reduction of patent term adjustment, the Notice of Assignee Name Change document, which explicitly states that it is to be simply placed in the file, does not require a response or any action from the PTO, and therefore did not cause substantial interference and delay in the patent issue process. Accordingly, the Notice of Assignee Name Change cannot form the basis of the additional reduction in patent term. Therefore, the eighty-two (82) day reduction in patent term shown on the PAIR printout is in error, and Patent No. 6,872,211 B2 is entitled to a patent term adjustment of one hundred and sixty-seven (167) days.

In accordance with 37 C.F.R. § 1.705(b)(2)(iv)(B), there was no circumstance, other than discussed above, constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. § 1.704.

Accordingly, as this application is not subject to any terminal disclaimers, Applicants respectfully request that the Office reconsider its calculations and re-set the patent term adjustment for this case at one hundred and sixty-seven (167) days.

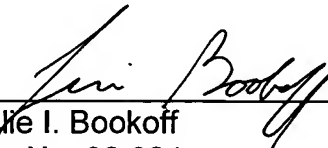
Please grant any extensions of time required to enter this Request and charge
any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

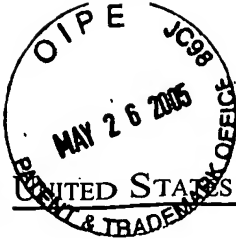
Dated: May 26, 2005

By: _____


Leslie I. Bookoff
Reg. No. 38,084

Attachments:

Copy of Determination of Patent Term Adjustment under 35 U.S.C. 154(b)
Copy of Fee Address Indication Form
Copy of Notice of Assignee Name Change
Copy of Issue Notification
PAIR printout



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,535	01/24/2002	Curtis White	BSC-1 59C1	3017
22852	7590	10/19/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			PRIDDY, MICHAEL B	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 10/19/2004

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 167 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 167 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.



PATENT
Customer No. 22,852
Attorney Docket No. 9423.0023-04

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)
For: HYBRID STONE RETRIEVAL) Confirmation No.: 3017
DEVICE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

NOTICE OF ASSIGNEE NAME CHANGE

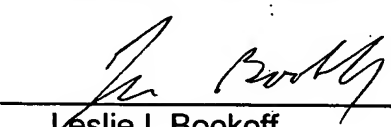
Effective January 1, 2005, the assignee of this case, Scimed Life Systems, Inc., has changed its name to Boston Scientific Scimed, Inc. Applicants request that this Notice be placed in the file.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 7, 2005

By: _____


Leslie I. Bookoff
Reg. No. 38,084



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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9423-23-04

MAY 26 2005

APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,535	03/29/2005	6872211	BSC-159C1	3017

22852 7590 03/09/2005

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

9423-0023
LIB/RGM/DNM

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment is 85 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

APPLICANT(s) (up to 18 names are included below, see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Curtis White, Spencer, IN;
Brad Elliott, Bloomington, IN;
James S. Bates, Bloomington, IN;

RECEIVED
MAR 14 2005
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

OK'd
3/14/05
JDS

Printer Friendly

10/057,535 HYBRID STONE RETRIEVAL DEVICE



Patent Term Adjustment History

Patent Term Adjustment (PTA) for Application Number: 10/057,535			
			Days
Filing or 371(c) Date:	01-24-2002	USPTO Delay (PTO):	196
Issue Date of Patent:	03-29-2005	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay(APPL):	111
Post-Issue Petitions (days):	+0	Total PTA:	85
USPTO Adjustment(days):	+0	Explanation Of Calculations	
Patent Term Adjustment History			
Date	Contents Description	PTO(Days)	APPL (Days)
03-29-2005	Patent Issue Date Used in PTA Calculation		
03-01-2005	Receipt into Pubs		
02-28-2005	Dispatch to FDC		
02-28-2005	Application Is Considered Ready for Issue		
02-18-2005	Receipt into Pubs		
01-07-2005	Issue Fee Payment Verified		
01-07-2005	Miscellaneous Incoming Letter	↑	82
01-07-2005	Issue Fee Payment Received	↑	↑
11-02-2004	Receipt into Pubs	↑	↑
11-01-2004	Workflow - File Sent to Contractor	↑	↑
10-19-2004	Mail Notice of Allowance	↑	↑
10-18-2004	Issue Revision Completed	↑	↑
10-18-2004	Notice of Allowance Data Verification Completed	↑	↑
10-18-2004	Notice of Allowability	↑	↑
08-05-2004	Date Forwarded to Examiner	↑	↑
08-05-2004	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)	↑	↑
07-22-2004	Request for Continued Examination (RCE)	↑	↑
07-22-2004	Workflow incoming amendment IFW	↑	↑
07-13-2004	Mail Advisory Action (PTOL - 303)	↑	↑
07-12-2004	Advisory Action (PTOL-303)	↑	↑
07-01-2004	Date Forwarded to Examiner	↑	↑
06-22-2004	Amendment after Final Rejection	↑	↑
06-22-2004	Workflow incoming amendment IFW	↑	↑
04-22-2004	Mail Final Rejection (PTOL - 326)	↑	↑
04-19-2004	Final Rejection	↑	↑
03-31-2004	IFW TSS Processing by Tech Center Complete	↑	↑
03-31-2004	Correspondence Address Change	↑	↑
03-31-2004	Change in Power of Attorney (May Include Associate POA)	↑	↑

02-13-2004	Date Forwarded to Examiner	⬆	⬆
02-04-2004	Response after Non-Final Action	⬆	29
02-04-2004	Request for Extension of Time - Granted	⬆	⬆
10-06-2003	Mail Non-Final Rejection	196	
09-29-2003	Non-Final Rejection	⬆	
03-03-2003	Information Disclosure Statement (IDS) Filed	⬆	
04-09-2002	Case Docketed to Examiner in GAU	⬆	
03-01-2002	Application Dispatched from OIPE	⬆	
02-25-2002	Application Is Now Complete	⬆	
02-08-2002	IFW Scan & PACR Auto Security Review	⬆	
01-24-2002	Initial Exam Team nn	⬆	

Close Window